

DATES: This emergency rule is effective on April 11, 1984, and expires on December 7, 1984.

ADDRESS: The complete file for this rule is available for inspection during normal business hours, by appointment, at the Service's Office of Environmental Services, 300 Ala Moana Boulevard, Room 6307, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232, (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Guam rail (*Rallus owstoni*) was described by Rothschild in 1895. It is a flightless bird with relatively long legs and small wings. The upper parts are largely dark in color, the throat and upper breast are near gray, and the lower parts are blackish with white barrings. The species is known only from the Territory of Guam in the Western Pacific Ocean. It formerly occurred in grassy areas, forests, and marshlands throughout the island. A drastic numerical and distributional decline began about 1971. The precise cause is not yet known, but a 1983 census indicated that fewer than 100 individuals survive.

A petition sent to the Service on August 28, 1978, by the Honorable Ricardo J. Bordallo, Governor of Guam, requested that the Guam rail, among other animals, be added to the U.S. List of Endangered and Threatened Wildlife. Another petition, sent to the Service on November 24, 1980, by the International Council for Bird Preservation, also requested the listing of the Guam rail, among other birds.

In the Federal Register of May 18, 1979 (44 FR 29128-29130), the Service issued a notice of review of status for the animals that were the subjects of the petition from the Governor of Guam. In the Federal Register of May 12, 1981 (46 FR 26464-26469), the Service published a notice accepting the petition from the

International Council for Bird Preservation, and announcing a status review of the subject birds. In the Federal Register of December 30, 1982 (47 FR 58454-58460), the Guam rail was included in category 1 of the Service's Review of Vertebrate Wildlife, meaning that there was then thought to be substantial information on hand to support the biological appropriateness of a listing proposal. In the Federal Register of November 29, 1983 (48 FR 53729-53733), the Service published a proposed rule to determine endangered status for the Guam rail. In the Federal Register of January 20, 1984 (49 FR 2485-2488), as corrected on February 16, 1984 (49 FR 5977), the Service published the finding that the listing of the Guam rail and certain other species covered by the petition from the International Council for Bird Preservation was warranted but precluded by other listing activity. The seeming discrepancy between this publication and the earlier proposal to list some of these same birds is explained by the fact that the actual finding had been made by the Service on October 13, 1983, but publication was delayed until January 20, 1984.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Guam rail should be classified as endangered. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Guam rail are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Guam rail

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Guam Rail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service determines endangered status for the Guam rail, a flightless bird found only in the Territory of Guam. This species has declined drastically in numbers and distribution. An emergency situation exists, because one of the last substantial groups occurs in an area in which land clearing operations are about to be started by the U.S. Air Force. This rule immediately implements the protection of the Endangered Species Act of 1973, as amended, for the Guam rail.

once occurred throughout Guam in grassland, forest, and marsh habitats. Since about 1971, surveys show that there has been a precipitous drop in range and numbers. A 1983 survey indicated that fewer than 100 individuals survive, and that these are distributed in several small, discontinuous groups in extreme northern Guam. The reduction probably has resulted in part from destruction of native habitat by human activity. Nonetheless, the overall rapid decline in recent years appears to have involved some factor in addition to habitat loss.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Overutilization by people is not thought to have been a major factor in the decline of the Guam rail, but the species was hunted legally as a game bird until 1973.

C. Disease or predation. The spread of avian diseases is currently a prime suspect as a main factor in the recent decline of the Guam rail, as well as certain other species on the island. To date, no particular disease has been identified, but relevant investigations are now being made by the Guam Aquatic and Wildlife Resources Division, funded through the Federal Pittman-Robertson Program and Section 6 of the Endangered Species Act. There are some similarities in pattern between the disappearance of birds on Guam and in other areas where disease is thought to have been a major problem. An introduced tropical mosquito (*Culex quinquefasciatus*), now common on Guam, was implicated in the disappearance of many of Hawaii's native birds, by acting as a vector for the spread of avian malaria and other diseases.

Predation by introduced animals is also suspected as a major contributing cause of the observed declines. The brown tree snake, sometimes known as the Philippine rat snake (*Boiga irregularis*), is now widespread on Guam. A specimen was collected with a nearly full grown Guam rail in its stomach. The introduced monitor lizard (*Varanus indicus*) is also common on the island and is a potential predator of birds. Cats, rats, dogs, and hogs, all brought to Guam through human agency, also may threaten the flightless Guam rail.

D. The inadequacy of existing regulatory mechanisms. The Guam rail was classified as endangered by the Territory of Guam on September 24, 1981, and is thus protected by the Endangered Species Act of Guam (Pub. L. 15-36). This protection, however, does not require Federal agencies to insure that their actions are not likely to

jeopardize the species, does not affect interstate commerce, and does not provide a basis for the substantial financial and technical assistance that will probably be necessary for a successful conservation program.

E. Other natural or manmade factors affecting its continued existence. DDT and other chlorinated hydrocarbons were employed extensively on Guam during World War II, and there has since been widespread use of agricultural insecticides. Preliminary results of a 1981 study indicate that pesticides are not now a problem, though they may have impacted birds in the past. An additional cause of mortality to the flightless Guam rail is being struck by motor vehicles on roads.

The decision to determine endangered status for the Guam rail was based on an assessment of the best available scientific information and of past, present, and probable future threats to the species. A determination of critical habitat is not considered prudent. A decision to take no action would exclude the Guam rail from needed protection pursuant to the Endangered Species Act. A decision to determine only threatened status would not adequately express the drastic numerical and distributional decline of the species and the continued jeopardy of the remaining population. Therefore, no action or listing as threatened would be contrary to the intent of the Act.

Reasons for Emergency Determination

As stated above, the Guam rail has declined drastically in range and numbers, and now fewer than 100 individuals are thought to survive. These birds are distributed in several small, discontinuous groups at the northern end of Guam, in the vicinity of Andersen Air Force Base. Air Force authorities are about to begin land clearing operations in an area occupied by one of these groups. Such activity might drive the birds into less favorable areas and destroy the vegetative cover on which they depend. Continuation of such habitat destruction would probably result in the swift extinction of the species. Therefore, an emergency situation exists, and immediate implementation of the protective provisions of the Endangered Species Act is considered necessary. Such implementation could result in measures to save the species (see "Available Conservation Measures," below).

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and

determinable," concurrent with the determination that a species is endangered or threatened. Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the involved species. In the case of the Guam rail, the Service finds that a determination of critical habitat is not prudent. Such a determination would result in no known benefit to the species and would delay completion of this rule. A prompt determination of endangered status is essential to the conservation of the Guam rail. As explained above, this species is on the verge of extinction and an emergency situation exists. The immediate implementation of the provisions of the Endangered Species Act is considered necessary, so that protection can be established and conservation measures initiated. Therefore, a concurrent critical habitat determination is not required.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for land acquisition and cooperation with States, and requires recovery actions. Such actions are initiated by the Service following listing. The protection required by Federal agencies, and taking and harm prohibitions, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal in *Federal Register* of June 29, 1983, 48 FR 29989). Section 7 requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. In the case of the Guam rail, as explained above under "Reasons for

Emergency Determination," land clearing operations by the U.S. Air Force may be jeopardizing the existence of the species.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale any Guam rail in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and the Guam Aquatic and Wildlife Resources Division.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes or to enhance the propagation or survival of

the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The Service will now review the Guam rail to determine whether it should be considered for placement on the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora or for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

Author

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service,

Washington, D.C. 20240, (703/235-1975 or FTS 235-1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, until December 7, 1984, Part 17, Subchapter B of Chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 83-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.11(h) is amended by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife under "BIRDS:"

§ 17.11 Endangered and threatened wildlife.

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(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS:							
Rail, Guam	<i>Rallus owstoni</i>	Western Pacific Ocean: U.S.A. (Guam)	do	E	146	NA	NA

Dated: April 9, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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